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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JEAN CLAUDE ANDRE et al.,

Plaintiffs and Appellants,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Defendant and Respondent.

B211748

(Los Angeles County
Super. Ct. No. BC311865)

APPEAL from judgments of the Superior Court of Los Angeles County,
Carolyn B. Kuhl, Judge. Affirmed.

Kiesel Boucher Larson, Raymond P. Boucher, Michael Eyerly; Arias, Ozzello &
Gignac, Mike M. Arias and Arnold C. Wang for Plaintiffs and Appellants.

Marlin & Saltzman, Louis M. Marlin, Alan S. Lazar and Lynn P. Whitlock for
Defendant and Respondent.

INTRODUCTION

Plaintiffs Jean Claude Andre and Julian Andre, Stephen Bardwell and Martha Bardwell-Smyser, Gene Rowland, and Eric Schneider are relatives and family members of decedents who enrolled in the UCLA Willed Body Program and whose bodies were donated to that program upon their deaths. Plaintiffs sued the Regents of the University of California (the Regents) for negligence and intentional infliction of emotional distress because of alleged wrongdoing and mishandling of donated bodies by the UCLA Willed Body Program.

Plaintiffs appeal from judgments entered following the trial court's grant of summary judgment in favor of the Regents. Based on *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244 (*Conroy*) and *Regents of University of California v. Superior Court* (2010) 183 Cal.App.4th 755 (*Waters*), we find that the donation agreement executed by the donor and the Uniform Anatomical Gift Act (the UAGA) (Health & Saf. Code, § 7150¹ et seq.) define the rights and duties associated with an anatomical gift. Under the UAGA, the rights of a donee created by an anatomical gift are superior to the rights of others, and UCLA as the donee had the exclusive right to control the disposition of a donated body's remains. The terms of the written donation agreement determine the duties imposed on the donee, and the only enforceable restrictions on a donation are those found in the terms of the document of gift executed in accordance with the UAGA. Therefore representations which UCLA made to family members, such as plaintiffs, about the disposition of a donor's remains create no additional duties owed to them beyond those in the document of gift. We conclude that the Regents owed no duty to plaintiffs as surviving relatives of a willed body donor and summary judgment was properly granted on the complaint for negligence, and we affirm the judgments.

¹ Unless otherwise specified, statutes in this opinion will refer to the Health and Safety Code.

FACTUAL AND PROCEDURAL HISTORY

Plaintiffs Jean Claude Andre and Julian Andre: Plaintiffs Jean Claude Andre and Julian Andre are sons of donor Jacques Andre, who enrolled in the UCLA Willed Body Program on January 1, 1998, by executing a document of gift that stated: “[I]t is my wish to donate my body to the Department of Anatomy, School of Medicine, of the University of California at Los Angeles, immediately following my death, for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable.” Jean Claude and Julian witnessed the document, and Julian read the document of gift before he signed it as a witness. Jacques Andre made the donation, and neither plaintiff obtained documents or information for the donor.

UCLA represented to the donor that only UCLA medical staff and students would have access to donated remains, that after studies were completed, remains were essentially intact and would be individually cremated, and that cremated remains were scattered at El Toro Memorial Park, at a cemetery or at sea, or were returned to the family. These representations were made to donors in material every donor received from UCLA and was asked to share with their family members, including the documents “The Gift of Knowledge,” “General Information,” and “Frequently Asked Questions.” Jean Claude Andre saw the “Frequently Asked Questions” document, the donation agreement, and one or two other documents in early 1998, again before his father’s death when he had custody of his father’s willed body file, and again after his father’s death on June 9, 2003. Julian did not recall seeing “The Gift of Knowledge.” He vaguely recalled other documents but could not identify them or recall what they said.

Before his father’s death, Jean Claude and Julian had no communications with UCLA about the donation, and did no independent investigation into the UCLA Willed Body Program. Jean Claude never saw any documents stating that donated bodies would not be reallocated to other researchers or institutions, and never saw anything representing that donated bodies would be cremated separately. Before his father’s death, Jean Claude understood that bodies donated to medical science and education were

dissected and were handled differently than bodies entrusted to the care of mortuary service providers.

Jean Claude had no knowledge how his father's body was used in the Willed Body Program and knew no specific facts that his father's body was sold, reallocated to any other institution, or given to any commercial institution.

Jean Claude and Julian believed and understood from their father that the cremated remains would be returned to the family. Before his father's death, Jean Claude could not recall any documentation saying that cremated remains would be returned, but did recall seeing something saying that cremated remains could be returned upon request.

In June 2003, after his father's death, Jean Claude telephoned UCLA about obtaining return of his father's cremains. He was told that UCLA would get back to him. He made a second call within a week, because he did not know how long or short a period UCLA would need the donated body. The woman he talked to said he could not get his father's cremains back because she could not locate any proof that Jacques Andre had requested that remains be returned to the family. Jean Claude had no further conversations with anyone from UCLA.

Jean Claude first learned of allegations concerning the UCLA Willed Body program from articles in the Los Angeles Times. Julian learned of these allegations from his brother.

Jean Claude was shocked because of concern that his father's body may have been involved in the allegations of wrongdoing at the UCLA Willed Body Program, and he felt suspicion, anger, sadness, betrayal, and disappointment. He experienced some physical symptoms of emotional distress, including loss of breath and he had had approximately six bad, upsetting dreams. He had not sought treatment for emotional distress caused by UCLA, had missed no time from work, and had been able to carry on his normal daily activities. Emotional distress caused by UCLA had not affected his relationships with his wife or son.

Julian experienced no physical symptoms of emotional distress related to the UCLA Willed Body Program, but he suffered feelings of sadness and anger and had bad dreams from which he awoke sad and upset. Julian received no treatment or counseling for emotional distress related to the UCLA Willed body Program, missed no time from school or work, and had not been limited in any of his daily activities.

Plaintiffs Stephen Bardwell and Martha Bardwell-Smyser: Plaintiffs Martha Bardwell-Smyser and Stephen Bardwell are the children of donor Jane Bardwell, who enrolled in the UCLA Willed Body Program on November 25, 1970, by executing a document of gift that stated: “[I]t is my wish to donate my body to the Department of Anatomy, School of Medicine, of the University of California at Los Angeles, immediately following my death, for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable.” Bardwell-Smyser witnessed the donor’s signature on the document of gift. UCLA represented to the donor that among other things, only UCLA medical staff and students would have access to donated remains, that after studies were completed remains were essentially intact and were individually cremated, and that cremated remains were scattered at El Toro Memorial Park, at a cemetery, or at sea, or were returned to the family. Bardwell-Smyser and Stephen Bardwell were also the children of Albert Nash Bardwell, who donated his body to UCLA and who died on June 15, 1989.

Bardwell-Smyser and her husband witnessed her parents sign paperwork for the donation of their bodies to the UCLA Willed Body Program. Before Jane Bardwell died on March 11, 2000, the only document Bardwell-Smyser saw was her mother’s document of gift and a December 11, 1970, letter from UCLA thanking Jane Bardwell for her donation. Stephen Bardwell and Bardwell-Smyser saw an instruction sheet, but neither one knew whether that occurred before or after their mother’s death. Neither Stephen Bardwell nor Bardwell-Smyser had discussions with UCLA. Before their mother’s death, Stephen Bardwell and Bardwell-Smyser did not independently investigate the UCLA Willed Body Program.

Stephen Bardwell had a conversation with his mother about the donation shortly after she signed the document of gift on November 25, 1970. In that conversation, she told Stephen that she and his father were donating their bodies to UCLA so they could be used for teaching and by medical students. During a family discussion in November 1970 before they signed the donation agreements, Bardwell-Smyser's parents told her it was their understanding that their donated bodies would only be used at UCLA. Neither of her parents ever specifically told Bardwell-Smyser that their donated bodies would not be used by any outside researchers. Jane Bardwell never specifically told Stephen Bardwell that she wanted her body to be used only by UCLA students, and did not tell him that she wanted to limit the uses to which her body was put with respect to scientific research.

In the summer of 1999, Bardwell-Smyser had concerns about the UCLA Willied Body Program because she was aware of media reports of alleged wrongdoing in that program earlier in the 1990's involving improper cremations and allegations that cremated remains were thrown out, along with medical waste, in Santa Monica Bay. Bardwell-Smyser learned of these allegations from the Los Angeles Times. Before her mother died in 2000, Bardwell-Smyser told Stephen Bardwell about the news articles about alleged wrongdoing by the UCLA Willied Body Program.

Jane Bardwell's donated body was cremated on December 6, 2000, and cremated remains were scattered at El Toro Memorial Park in Lake Forest on February 2, 2001.

Bardwell-Smyser did not know whether her mother's donated body was utilized by faculty and staff at UCLA or the manner in which her mother's donated body was handled by UCLA staff. Stephen Bardwell had no information that his mother's donated body was not used for medical science.

Bardwell-Smyser first learned of allegations concerning the UCLA Willied body Program from newspaper articles in March 2004. She brought those allegations to Stephen Bardwell's attention. None of those media reports involved her mother's donated body.

When she first heard allegations about the UCLA Willed Body Program in 2004, Bardwell-Smyser was shocked, and felt nausea, anger, and fear that this might have happened to her mother's body, and betrayal because it was not what she assumed would happen to her mother's donated body when it went to UCLA. She also experienced inability to sleep. She also felt guilty that she did not persuade her mother to change her mind and that she did not mention concerns about the program. Bardwell-Smyser had not sought treatment or counseling for emotional distress caused by the UCLA Willed Body Program, and her emotional distress had not limited her in any of her daily activities.

Stephen Bardwell experienced some emotional distress because of allegations about the UCLA Willed Body Program. The thought that his mother's body might not have been treated with respect caused him mental agitation which led to an upset stomach. He also experienced a lack of ability to concentrate, and felt disappointed and angry. He did not seek treatment or counseling, however, and he was able to continue to work, albeit with some loss of ability to concentrate. His emotional distress did not limit his daily activities. The possibility that his mother's donated body was sold to a commercial business was disturbing to him.

Plaintiff Gene Rowland: Plaintiff Gene Rowland is the son of James C. Rowland, who enrolled in the UCLA Willed Body Program in 1961 by executing a document of gift that stated: "[I]t is my wish to donate my body to the Department of Anatomy, School of Medicine, of the University of California at Los Angeles, immediately following my death, for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable." Donor James C. Rowland died at age 93 on April 19, 2000. The hospital where he died contacted UCLA to pick up the body.

Gene Rowland first became aware of his father's decision to donate his body to the UCLA Willed Body Program in the 1960's. His father told Rowland he wanted to donate his body to UCLA for educational and scientific purposes. They had very few

conversations about the donation. When Gene Rowland first heard of his father's decision to donate his body in the 1960's, he was pleased with that decision.

UCLA represented to donor James C. Rowland that only UCLA medical staff and students would have access to donated remains, that after studies were completed remains were essentially intact and were individually cremated, and that cremated remains were scattered at El Toro Memorial Park, at a cemetery or at sea, or were returned to the family. These representations were made to donors in material every donor received from UCLA and was asked to share with family members. Gene Rowland never saw the document of gift signed by the donor or documents or literature provided by UCLA about the willed body program. Gene Rowland did not have conversations with UCLA about his father's donation. Gene Rowland understood that donated bodies would be used for approximately two years. He had planned to hold a memorial service at a rose garden when he was notified of his father's final disposition.

Gene Rowland, his mother, and his brother are all enrolled in the UCLA Willed Body Program. Gene Rowland has not, to date, taken any steps to un-enroll himself as a donor to the UCLA Willed Body Program.

Gene Rowland's main objection to how UCLA handled his father's donated body is his belief that the body was sold for profit. Gene Rowland believed it would not be inconsistent with his father's wishes, and he himself would have no objection, if the body were used in legitimate research, even if this research were not done at UCLA, as long as the donated body was not sold for profit.

Gene Rowland had no knowledge of how his father's body was actually used or handled at the UCLA Willed Body Program, how it was used for research, or what its final disposition was.

Gene Rowland first learned of allegations about the UCLA Willed Body Program from newspaper articles in 2004. None of the media reports involved the donated body of Gene Rowland's father. Upon reading the media reports, Gene Rowland became disturbed and concerned. As a result of the UCLA Willed Body Program, however, he

experienced no physical ailments, did not seek treatment for emotional distress, and lost no time from work due to emotional distress.

Plaintiff Eric Schneider: Eric Schneider is the husband of donor Sandra Lorena Sanchez, who, after being diagnosed with terminal cancer, expressed to Schneider her desire to donate her body to the UCLA Willed Body Program. Because Sanchez was in a coma on December 28, 1999, Schneider executed the document of gift by signing his name for Sanchez. It was her intent, as she expressed to him, to sign the document and she was unable to sign it herself. The document of gift that Schneider executed on behalf of Sanchez provided that “In accordance with the California Uniform Anatomical Gift Act (California Health and Safety Code Section 7150, et seq.), I hereby declare that, immediately after my death, I wish my body to be donated to the UCLA School of Medicine Department of Pathology and Laboratory Medicine to be preserved and used in such manner as the University deems desirable, at its sole discretion, for purposes of medical teaching, training and research. [¶] I further acknowledge that all or part of my donated biological materials, such as body fluids, tissues and organs and all other anatomical remains, may be used for the development of one or more research, diagnostic, or therapeutic products and authorize such potential use and distribution at the discretion of the UCLA School of Medicine.” The document of gift further stated: “As a world leader in medical education and research, UCLA shares medical and anatomical specimens with other facilities. Please initial here_____if you do not want UCLA to share your remains with any other teaching or research institution.” Schneider read the document of gift before he signed it on behalf of Sanchez, and did not initial the space that would have advised UCLA that he objected to other institutions using the donated body.

Schneider stated that UCLA represented to the donor that only UCLA medical staff and students would have access to donated remains, that after studies were completed remains were essentially intact and were individually cremated, and that cremated remains were scattered at El Toro Memorial Park, at a cemetery or at sea, or were returned to the family. Plaintiff stated that these representations were made to

donors in material every donor received from UCLA and was asked to share with family members.

The only documentation concerning the UCLA Willed Body Program that Schneider saw before delivery of Sanchez's body to UCLA was the document of gift and the flier he and Sanchez obtained from the hospice or cancer treatment center. Schneider does not have the flier, and does not recall anything stated in the flier. Schneider did not recall having any discussions with anyone at UCLA, before or after Sanchez's death, about the donation of his wife's body. Schneider could not recall receiving any instructions with the document of gift.

Schneider did not have lengthy discussions with Sanchez about the donation. He stated that his wife wanted to donate her body to UCLA for research and study. Schneider and Sanchez were aware that remains would be cremated after use in the willed body program, but Schneider did not recall discussing anything else about final disposition. Schneider knew that cremated remains would not be returned to the family and he did not expect them to be returned.

Sanchez died on December 30, 1999. Sanchez's body was delivered to UCLA on December 31, 1999.

Schneider first learned of allegations concerning the UCLA Willed Body Program from an on-line news source in 2004. None of the media reports that Schneider saw discussed Sanchez's donated body.

Schneider experienced anger and sadness as a result of the donation of Sanchez's body to the UCLA Willed Body Program, and he felt depressed, disgusted and violated, and felt sick. However, he had suffered no physical symptoms as a result of hearing of allegations involving the UCLA Willed Body Program. Schneider had sought counseling to help him through the process of grieving for his wife's death. Emotional distress because of the UCLA Willed Body Program had not caused him to lose any time from work and had not limited his daily activities.

Complaint Against the Regents and Other Defendants: The operative complaint is the Third Amended Complaint, filed against the Regents, the UCLA School of Medicine, Henry Reid, Ernest V. Nelson, Albennie E. Nelson, Johnson & Johnson, and Depuy Mitek, Inc. The complaint alleged that since 1997, Reid, Director of the UCLA Willed Body Program, and other employees improperly sold donated bodies and body parts for profit to Johnson & Johnson, Depuy Mitek, and NuVasive, Inc.

The complaint alleged that in 2003, the California Department of Health Services determined that NuVasive was receiving cadaveric material from UCLA's Willed Body Program. On March 7 and 8, 2004, Reid and Nelson were arrested on charges stemming from sale of bodies and body parts from the UCLA Willed body Program. By court order, the UCLA Willed Body Program was shut down. UCLA issued statements apologizing for causing pain and suffering to donors' family members.

The negligence cause of action alleged that UCLA employees induced decedents to will their bodies to UCLA for medical and scientific purposes, and promised decedents and represented to plaintiffs that decedents' bodies would be handled and disposed of in a proper, dignified manner or that decedents' ashes would be scattered in a rose garden and that decedents' bodies would not and could not be sold.

The negligence cause of action alleged that UCLA relied on the plaintiffs to read information in documentation provided by UCLA, to notify UCLA of decedents' death, to refrain from having decedents' bodies autopsied or embalmed or otherwise disposing of decedents' bodies, and to arrange for UCLA to pick up decedents' bodies. The complaint alleged that UCLA created a relationship between itself and plaintiffs by instructing donors to inform relatives of their donation of remains to the Willed Body Program, by having survivors carry out donors' intentions, and by making public statements that decedents' bodies would be treated and disposed of properly. The complaint alleged that the Regents owed plaintiffs the duty to handle decedents' bodies according to cremation and funeral industry standards, to ensure decedents' remains would not be sold, and to act with ordinary care regarding use and disposition of decedents' remains. The complaint alleged that the Regents breached these duties, failed

to handle and dispose of decedents' remains properly, and conspired to engage in illegal sales of donated bodies for profit.

A cause of action for intentional infliction of emotional distress alleged that placement of remains in an El Toro Memorial Park rose garden was a fiction told to donors and their families to induce them to donate. The complaint alleged that donors were told that bodies would be handled with dignity and respect and would not be sold, and donors passed these false promises to their families. The complaint alleged that UCLA then mishandled and disposed of donated bodies and caused plaintiffs to suffer serious emotional distress.

The Regents' Motions for Summary Judgment: In a stipulation and order approved by the trial court and filed on April 3, 2008, counsel for plaintiffs and for the Regents entered into a stipulation to permit the Regents to bring motions for summary judgment on specific issues. The parties sought to determine whether plaintiffs' claims could survive a summary judgment motion based on factual and legal arguments raised by the Regents which did not depend on deposition testimony of indicted witnesses Reid and Nelson, who at that time were not available for discovery. These issues were:

1. Whether plaintiffs had standing to assert their claims, an issue which could be stated as an issue of duty: whether the Regents owed plaintiffs any duties that would have been breached by the wrongdoing alleged in the complaint;
2. Whether Government Code section 815 made the Regents immune from liability for these claims; and
3. Whether plaintiffs had evidence of legally sufficient damages to support their claims.

The parties agreed that a decision in favor of the Regents on any of these issues as to any plaintiff was potentially dispositive as to that plaintiff's claims or case. If the trial court found against the Regents on these issues, the parties agreed that remaining issues in defendant's summary judgment motions should be continued until it was determined whether discovery of Reid and Nelson could be completed.

The Regents brought separate motions for summary judgment, or in the alternative summary adjudication, against Jean Claude Andre and Julian Andre, Bardwell and Bardwell-Smyser, Rowland, and Schneider. The Regents' motions contended, inter alia, that plaintiffs had no evidence that would establish that the Regents owed them a duty, no evidence to support their claim of intentional infliction of emotional distress, and no evidence of damages.

The trial court granted summary judgment in favor of the Regents as to Jean Claude Andre and Julian Andre, Bardwell and Bardwell-Smyser, Rowland, and Schneider.

The trial court found plaintiffs Jean Claude Andre and Julian Andre had not offered sufficient evidence of emotional distress injury. The trial court found that neither the document of gift signed by Jane Bardwell nor representations by UCLA restricted the use of her anatomical gift. The trial court found that neither the document of gift signed by James Rowland nor representations by UCLA restricted use of his anatomical gift. The trial court found that neither the document of gift signed by Eric Schneider on behalf of donor Sanchez nor representations by UCLA restricted the use of her anatomical gift.

Judgment in favor of the Regents and against Jean Claude Andre and Julian Andre was entered on September 30, 2008. Jean Claude Andre and Julian Andre filed a timely notice of appeal.

Judgments in favor of the Regents and against Stephen Bardwell and Martha Bardwell-Smyser, Gene Rowland, and Eric Schneider were entered on August 26, 2008. Stephen Bardwell and Martha Bardwell-Smyser, Rowland, and Schneider filed timely notices of appeal.

ISSUES

Jean Claude Andre and Julian Andre claim on appeal that the trial court erroneously ruled that plaintiffs did not offer sufficient evidence of emotional distress injury.

Rowland, Bardwell and Bardwell-Smyser, and Schneider claim on appeal that the trial court erroneously found that the Regents did not owe a duty to plaintiffs.

DISCUSSION

1. *Standard of Review*

“A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court’s decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has ‘shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,’ the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff ‘may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action’ [citations.]” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477.) This court reviews orders granting or denying a summary judgment de novo. “We exercise ‘an independent assessment of the correctness of the trial court’s ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law.’ [Citation.]” (*Lockhart v. County of Los Angeles* (2007) 155 Cal.App.4th 289, 303.)

2. *Plaintiffs Have Not Shown That UCLA Owed Them Duties*

Plaintiffs claim that UCLA owed them a duty not to mishandle their relatives’ bodies by selling them to third-party commercial entities. Plaintiffs argue that sale of donated bodies was not consistent with the UCLA Willed Body Program’s protocols and procedures, violated representations about its Willed Body Program which UCLA made to decedents and to the public, and was inconsistent with the terms of the donation agreement and the UAGA.

To establish liability for negligence, a plaintiff must prove duty, breach, causation, and damages. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.)

a. *Conroy Held That the Regents Had No Duty to the Surviving Relatives of a Willed Body Donor*

In *Conroy* the California Supreme Court rejected the arguments plaintiffs make in this case. In *Conroy*, which was also a willed body case, a donor executed a document of gift to the University of California. The University of California made representations to the donor's relative and then allegedly mishandled the donor's remains. Like the plaintiff in *Conroy*, Bardwell, Bardwell-Smyser, Rowland, and Schneider are surviving relatives of a willed body donor whose remains were allegedly mishandled, and they allege that the Regents made representations to them about the use and disposition of donated remains and failed to comply with those representations. Like the plaintiff in *Conroy*, Bardwell, Bardwell-Smyser, Rowland, and Schneider argue that those representations created legal duties, including a duty to avoid causing foreseeable emotional harm to the donor's family members. In *Conroy* the Supreme Court rejected these arguments and held that the UAGA and the document of gift defined the Regents' duties and that representations made by the University of California to the donor's family did not amend the document of gift. (*Conroy, supra*, 45 Cal.4th at pp. 1253-1254.)

In *Conroy*, the plaintiff's husband executed an agreement to donate his body to the U. C. Irvine Willed body Program. The donation agreement stated: " 'I here state that it is my wish to donate my body to the Department of Anatomy and Neurobiology, College of Medicine, University of California, Irvine (UCI), immediately following my death, for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable. My body, when delivered to UCI, will be unembalmed and in good condition. It is further understood and agreed that final disposition of my body by UCI shall be in accordance with the State Code.' ”² After the husband's death his body was delivered to UCI. Approximately nine

² The donation agreement executed by plaintiff's husband in *Conroy* was nearly identical to the donation agreements executed by Jacques Andre, Jane Bardwell and by James C. Rowland, except that their documents of gift did not contain the final sentence in the document of gift in *Conroy*. The document gift signed by Eric Schneider on behalf

months later, plaintiff saw news reports of misconduct at the UCI Willed Body Program and called UCI to inquire about her husband's body. The program's interim director later told plaintiff that the previous director failed to keep proper records and that UCI did not know what happened to her husband's body after it was delivered to UCI. Plaintiff then sued the Regents, alleging that as holder of the statutory right to control disposition of her husband's body, she had entrusted it to defendants under the UCI Willed Body Program for teaching and research purposes; that upon completion of the educational and research purposes for which the donation was made she was to receive her husband's remains; that plaintiff discovered that defendants used cadavers donated to the UCI Willed Body Program for unauthorized purposes, including private for-profit tutoring classes and transporting and dismembering of bodies for profit; that defendants failed to maintain records to ensure that cadavers were used only for authorized purposes and to enable return of remains to family members; and that her husband's body was misused in that UCI did not use it for medical research. (*Conroy, supra*, 45 Cal.4th at pp. 1247-1248.)

The Regents moved for summary judgment on causes of action for negligence, negligent misrepresentation, and fraud and intentional deceit. Plaintiff's opposition to the motion attached her declaration recounting a phone conversation with the director of the UCI Willed Body Program that took place before her husband executed the donation agreement. In that conversation, the director told plaintiff that after UCI completed its research, her husband's body would be cremated and the ashes scattered at sea, the family would be notified so they could take part in scattering those ashes at sea, and that plaintiff and her husband's physician would be advised of medical findings pertaining to her husband's body. Plaintiff's opposition also submitted evidence that the prior director had owned or colluded with several companies that profited from sales and use of donated cadavers. (*Conroy, supra*, 45 Cal.4th at pp. 1248-1249.)

of donor Sandra Lorena Sanchez contained different language, but provided that the donation was made in accordance with the UAGA and provided for use of the donated body by UCLA in such manner as UCLA deemed desirable, at its sole discretion, for purposes of medical teaching, training and research.

The trial court granted the Regents' motion for summary judgment, the Court of Appeal affirmed, and the California Supreme Court also affirmed. We find that *Conroy* controls this case.

b. *The UAGA Defines the Rights and Duties Associated With an Anatomical Gift*

As in *Conroy* and *Waters*, plaintiffs alleged that based on UCLA's promises and representations to the donors and to plaintiffs, the donation of the bodies of Jacques Andre, Jane Bardwell, James C. Rowland and Sandra Lorena Sanchez created a duty to handle and dispose of decedent's remains in a proper, dignified manner that would not shock plaintiffs' sensibilities. *Conroy* rejected the existence of this duty, based on the terms of the document of gift and on UAGA statutes. (*Conroy, supra*, 45 Cal.4th at p. 1255; *Waters, supra*, 183 Cal.App.4th at p. 767, 769-770.)

After donors Andre, Bardwell, Rowland, and Sanchez (by Schneider) executed donation agreements and upon the donors' deaths, the statutory right to control disposition of their bodies passed to UCLA, pursuant to former sections 7150.5, subdivision (h) and 7154, subdivision (a). (*Conroy, supra*, 45 Cal.4th at p. 1255; *Waters, supra*, 183 Cal.App.4th at p. 767.) Former section 7154, subdivision (a) states, in relevant part: "Rights of a donee created by an anatomical gift are superior to rights of others[.]" As the statutory rights holders, UCLA had "the exclusive right to control the disposition of the remains[.]" (*Conroy*, at p. 1255; *Waters*, at p. 767.) Section 7100.1, subdivision (a) states, in relevant part: "A decedent, prior to death, may direct, in writing, the disposition of his or her remains and specify funeral goods and services to be provided. Unless there is a statement to the contrary that is signed and dated by the decedent, the directions may not be altered, changed, or otherwise amended in any material way, except as may be required by law[.]" Thus the terms of a written donation supersede the rights of statutory rights holders (who are defined in section 7100) to control disposition of the decedent's body. (*Conroy*, at p. 1257; *Waters*, at p. 767.) Close family members, such as plaintiffs, do not have the legal right to alter written donation agreements executed by decedents Andre, Bardwell, Rowland, and Sanchez. Because the decedents' donations were "irrevocable" upon their deaths, plaintiffs did not

enter into an agreement with UCLA regarding their donated bodies, and representations by UCLA did not cause plaintiffs to alter their legal relations with UCLA. (*Conroy*, at p. 1257; *Waters*, at p. 767.) The UAGA “ ‘ “recognizes and gives legal effect to the right of the individual to dispose of his own body without subsequent veto by others[.]” ’ ” (*Conroy*, at p. 1257, quoting 8A West’s U. Laws Ann., (2003) Anatomical Gift Act (1987) com. to § 2, pp. 26-27; *Waters*, at pp. 767-768.) As former section 7150.5 subdivision (h) stated, “An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor’s death.”³ Defendant Regents owed no duty to plaintiffs regarding disposition of decedents’ bodies.

c. The Terms of the Document of Gift, Executed Pursuant to the UAGA, Subject to State Law, Are the Only Enforceable Restrictions on a Donation; Representations Outside the Document of Gift Did Not Amend or Alter the Donation Agreement and Created No Duty to Plaintiffs

Plaintiffs claim that UCLA made representations to them or to donors, which were not found in the UAGA or the donation agreement, which gave rise to a duty owed to them by UCLA. UCLA’s representations included assurances that UCLA would use donated body only for medical faculty, students, staff, or students in health-related professions, and that body parts could not legally be sold.

The plaintiffs in *Conroy* and in *Waters* similarly alleged that representations UCI made to them concerning disposition of their family members’ remains created legally enforceable duties to them. Rejecting that argument, *Conroy* and *Waters* held that representations made outside the document of gift cannot create legal duties. (*Conroy*,

³ Former section 7150.5, subdivision (h) was repealed in 2007 (Stats. 2007, ch. 629, § 1), and was replaced by section 7150.35, subdivision (a): “Except as otherwise provided in subdivision (g) and subject to subdivision (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor’s body or part if the donor made an anatomical gift of the donor’s body or part under Section 7150.20 or an amendment to an anatomical gift of the donor’s body or part under section 7150.25.”

supra, 45 Cal.4th at p. 1253; *Waters, supra*, 183 Cal.App.4th at p. 768.) *Conroy* looked to the terms of the written donation agreement to determine the duties to be imposed on the donee. *Conroy* found that the only enforceable restrictions on a donation were those found in the terms of the document of gift executed in accordance with the UAGA. The donation agreement did not specify that remains were to be returned to the plaintiff. Therefore *Conroy* rejected the plaintiff's allegation that the Regents breached their duty to return her husband's ashes to her following use of the donated body. (*Conroy*, at p. 1253; *Waters*, at p. 769.)⁴

The documents of gift executed by Jacques Andre, Jane Bardwell, James C. Rowland and Sandra Lorena Sanchez did not state that after use of their donated bodies, the UCLA Willed Body Program was required to return cremated remains to plaintiffs. The documents of gift did not state that remains were individually cremated, that cremated remains were scattered at El Toro Memorial Park, at a cemetery, or at sea, or were returned to the family, and did not state that the donor's body would be cremated after three years and that ashes would be scattered in a rose garden on the UCLA campus. The documents of gift executed by Jacques Andre, Jane Bardwell, James C. Rowland and Sandra Lorena Sanchez made no other provision for disposition of those bodies after use by the UCLA Willed body Program. Because Jacques Andre, Jane Bardwell, James C. Rowland and Sandra Lorena Sanchez (by Schneider) executed their donation agreements before January 1, 2001, the UAGA did not require return of cremated remains and did not give family members the right to specify final disposition of the donee's remains. Consequently representations not found in the document of gift created no duty owed by

⁴ The provision of the UAGA in effect at the time of the donation of Mr. Conroy's body, moreover, did not require return of his remains. Although section 7151.40, subdivision (b) required the donee to return the decedent's cremated remains unless the donor had designated otherwise in the document of gift, this provision applied only to donations made pursuant to a donation agreement executed after January 1, 2001. *Conroy* stated that the California Supreme Court was "loath to expand a donee's duties in this area beyond those the Legislature has provided." (*Conroy, supra*, 45 Cal.4th at p. 1254.) Thus the UAGA did not require return of remains of a body donated before January 1, 2001.

the Regents to plaintiffs regarding disposition of the bodies of Jacques Andre, Jane Bardwell, James C. Rowland and Sandra Lorena Sanchez. Enforcing such duties would violate section 7100.1, subdivision (a), prohibiting alteration, change, or amendment of a decedent's written disposition of his or her remains.

Conroy rejected the imposition of duties on the donee of a decedent's body when those duties have no source in the donation agreement or in state law. Permitting family members to impose additional obligations on the Regents would violate the holding of *Conroy*.

d. *Conclusion*

Plaintiffs have not shown that UCLA owed duties to surviving relatives of a willed body donor.

3. *Plaintiffs Have Not Shown That the Document of Gift Contained an Implied Restriction That Donated Remains Could Not Be Used For Any Purpose Other Than Medical Research or Education*

Plaintiffs Bardwell and Bardwell-Smyser, Rowland, and Schneider claim that the documents of gift contained an implied restriction that donated remains may not be used for any purpose other than medical research or education. The complaint, however, did not allege that the documents of gift contained this restriction or that such a restriction created a duty which the Regents owed to the plaintiffs. The Regents had the burden on summary judgment of negating only those theories of liability alleged in the complaint. The Regents were not obligated to refute liability on some theoretical possibility not included in the pleadings. (*Conroy, supra*, 45 Cal.4th at p. 1254.)

The documents of gift executed by Jane Bardwell and by James C. Rowland, moreover, stated that the donors wished to donate their bodies to the UCLA School of Medicine immediately following their deaths "for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable." Thus the donation agreement granted sole discretion to UCLA or its authorized representative to determine the purposes for which the donated body is to be used and contained no restriction on that discretion.

The document of gift executed by Schneider on behalf of Sandra Lorena Sanchez stated that the donor wished to donate her body to the UCLA School of Medicine “to be preserved and used in such manner as the University deems desirable, at its sole discretion, for purposes of medical teaching, training and research.” The donation agreement granted sole discretion to UCLA to determine the purposes for which the donated body is to be used and contained no restriction on that discretion. The document of gift further stated: “I further acknowledge that all or part of my donated biological materials, such as body fluids, tissues and organs and all other anatomical remains, may be used for the development of one or more research, diagnostic, or therapeutic products and authorize such potential use and distribution at the discretion of the UCLA School of Medicine.” The document of gift further stated: “As a world leader in medical education and research, UCLA shares medical and anatomical specimens with other facilities. Please initial here_____if you do not want UCLA to share your remains with any other teaching or research institution.” Thus the donation agreement appears to contemplate the use and distribution at the discretion of the UCLA School of Medicine of donated remains for development of research, diagnostic, or therapeutic products, and the sharing of medical and anatomical specimens with other facilities. There was no implied restriction on UCLA’s discretion to determine the purposes for which the donated body was to be used.

4. Because the Regents Owed No Duty to Jean Claude Andre and Julian Andre, Summary Judgment Was Properly Granted in Defendant’s Favor on the Negligence Cause of Action and It Is Not Necessary to Address Emotional Distress Damages

Jean Claude Andre and Julian Andre claim on appeal that the trial court erroneously granted summary judgment on the negligence cause of action because the trial court found that plaintiffs had not offered sufficient evidence of severe emotional distress and erroneously required the plaintiffs provide evidence of their “severe” emotional distress rather than of their “serious” emotional distress. California law does not recognize an independent tort of negligent infliction of emotional distress. The tort is

negligence, a cause of action whose essential elements include a duty to plaintiff. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 984-985.) Because, as we have found, defendant Regents owed no duty to plaintiffs, summary judgment was properly granted in favor of defendant Regents on the negligence cause of action and it is unnecessary to address the issue of emotional distress damages.

DISPOSITION

The judgments are affirmed. Costs on appeal are awarded to defendant Regents of the University of California.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.